

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant: § Oleg B. Rashkovskiy et al. § Art Unit: 2424
Serial No.: 10/848,931 § § Examiner: Michael P. Van Handel
Filed: May 19, 2004 § § Conf. No.: 5716
For: Providing Content § § Atty Docket: BKA.0002C1US
Interruptions § §

Mail Stop **Appeal Brief-Patents**
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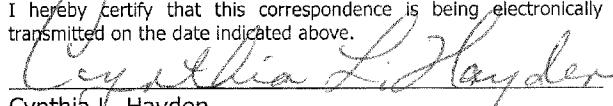
REPLY BRIEF

In response to the Examiner's Answer, the following reply brief is submitted.

The Examiner glosses over the problem that Arsenault assembles discrete segments and then simply injects the advertisements between them. Therefore, he neither interrupts to place within the content, nor does he need to do any analysis of the content.

This is made most graphic by Arsenault's Figure 8. Note that, as the Examiner points out, 162 is just the movie. 164 is the movie with ads inserted, but notice that each of the movie segments 170b and 170c is absolutely identical. In other words, the movie segments between the three advertisements are identical in length. It is unbelievable that the advertisements fit precisely after segments of equal length after analysis of content to decide where to put the advertisements. Instead, it is clear that the advertisements were simply stuck after equal length segments without any analysis whatsoever.

The Examiner suggests that the same thing is mentioned in the applicant's specification. The answer to this is so what. There is no rule that every embodiment set forth within the specification is covered in the claims. Obviously, the Examiner appreciates that merely periodically injecting advertisements in the content, as is done in Arsenault, is not covered in the claims which now require analysis of the content to determine where to insert. Merely jamming

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the advertisements in periodically does not meet the bill and neither does Arsenault. The Examiner is improperly attempting to add things from the specification into the claims.

The Examiner's logic that because it is in the specification it must be in the claims is legally flawed. Its failure to address or rebut the point made in the appeal brief, that the equally sized segments between advertisements show that Arsenault is merely jamming advertisements between fixed length segments, demonstrates that the Examiner's arguments do not hold up.

That is, at best, Arsenault is silent on how he inserts the advertisements. This alone should be sufficient to doom the rejection. Moreover, the fact that Arsenault shows periodicity in his insertion is further evidence that Arsenault is not analyzing the content. Therefore, based on the absence of teaching and what is actually taught, the rejection, based on Arsenault, is baseless.

The Examiner also notes that the organizing of data packets in an appropriate order requires an analysis of the content. This is a reference to Arsenault's description of Figure 8. However, there is no suggestion that that alleged organization of packets has anything to do with determining where to place the advertisement. See Arsenault at paragraph 18, lines 1-5. The next line after suggesting that there is organizing of the packets suggests that playback option 162 shows the cache programs displayed in an uninterrupted format. Thus, we already have the packets organized into a sequence before there is any decision about where to place the advertisements. As a result, this organization does not constitute the claimed analysis since the claimed analysis must specifically be an analysis of the content "to identify a location to insert the advertisement," not any old analysis.

With similar logic, the Examiner also argues on page 14 that playback of the first packet of advertisement would require that the playback of the previous packet of the program was finished playing and, thus, requires some analysis of content. Again, the Examiner's analysis suffers from the same deficiency. That is, this analysis of what got played back, when, and how, is too little, too late. There is no reason that the analysis that one packet is done so that you can start the next packet is an analysis which in any way relates to determining where to put the advertisement.

Moreover, the analysis of where to put the advertisement must be while the portion is still stored in the cache and necessarily predates the decision of what has been played and what has not been played. Again, the Examiner's analysis simply does not hold up.

The best that can be said for the Examiner's reliance on Arsenault is that Arsenault is silent on the point of novelty here. In fact, he is not silent since Figure 8 shows periodicity and, therefore, lack of any content analysis to decide where to place the advertisements. Given this combination of issues with the Arsenault reference, it is clear that Arsenault fails to make out a *prima facie* rejection. As a result, the rejection should be reversed.

Respectfully submitted,

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